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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re E.M., a Person Coming Under the Juvenile  
Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

E.M.,

Defendant and Appellant.

F077928

(Super. Ct. No. JJD060359)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Tulare County. Juliet L. Gallo, Judge.

Martin Baker, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez, Lewis A. Martinez and Amanda D. Cary, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Detjen, Acting P.J., Peña, J. and Smith, J.

Minor E.M. appeals the juvenile court's refusal to seal his record pursuant to Welfare and Institutions Code section 786, subdivision (a).<sup>1</sup> The People concede the juvenile court should have ordered E.M.'s records sealed and we agree. Accordingly, we remand to the juvenile court with directions to dismiss the petition and seal the records.

### **BACKGROUND**

On December 19, 2005, a section 602 petition was filed against minor, alleging minor committed, when he was 15 years old, "attempted home invasion" robbery (Pen. Code, §§ 664, 211; count 1), and first degree residential burglary (Pen. Code, § 459; count 2). As to count 1, the petition alleged minor "voluntarily acted in concert and entered a structure described in [Penal Code section 213, subdivision (a)(1)(A)]." As to count 2, the petition alleged minor personally used a rifle during the commission of the burglary (Pen. Code, § 12022.5, subd. (a)(1)).

On January 3, 2006, minor was not present at the hearing, and his mother informed the court he was in custody in another county on other charges. The juvenile court issued a bench warrant for minor to be transported back to Tulare County.

On January 5, 2006, the prosecutor amended the allegation as to count 2. In place of Penal Code section 12022.5, subdivision (a)(1)), it was alleged pursuant to Penal Code section 12022, subdivision (a) that a principal was armed with a firearm during the commission of the burglary.

On February 5, 2018, a little over 12 years later, minor, now 27 years old, was arrested on the bench warrant following a traffic stop. He appeared and was released on his own recognizance.

On May 18, 2018, the juvenile court held a contested jurisdictional hearing. The court found the two counts and the allegations true. The court stated it could not seal the

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise noted.

record regarding count 1 because the attempted robbery was listed in section 707, subdivision (b); it made no difference that the robbery was an attempt. The court noted the record on count 2 could be sealed.

On June 28, 2018, the juvenile court held a dispositional hearing. The court stated: “Youth probation and wardship is dismissed satisfactorily, because you basically stayed out of trouble all of this time.” The court did not order that the records pertaining to the petition be sealed.

On August 6, 2018, minor filed a notice of appeal.

### **DISCUSSION**

The parties agree that the juvenile court erred when it failed to seal the records pertaining to the petition. Section 786, subdivision (a) provides in relevant part:

“If a person who has been alleged or found to be a ward of the juvenile court *satisfactorily completes* (1) an informal program of supervision pursuant to Section 654.2, (2) probation under Section 725, or (3) a term of probation for any offense, *the court shall order the petition dismissed. The court shall order sealed all records pertaining to the dismissed petition* in the custody of the juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice. The court shall send a copy of the order to each agency and official named in the order, direct the agency or official to seal its records, and specify a date by which the sealed records shall be destroyed.” (Italics added.)

Subdivision (d) of section 786, however, prohibits the dismissal and sealing of records when the offense the minor committed is one listed in section 707, subdivision (b):

“A court shall not seal a record or dismiss a petition pursuant to this section if the petition was sustained based on the commission of an offense listed in subdivision (b) of Section 707 that was committed when the individual was 14 years of age or older unless the finding on that offense was dismissed or was reduced to a misdemeanor or to a lesser offense that is not listed in subdivision (b) of Section 707.”

Section 707, subdivision (b) lists robbery, but not attempted robbery and not burglary, the two offenses minor was found to have committed. The juvenile court erroneously believed *attempted* robbery was included in the list. (See *David P. v. Superior Court* (1982) 127 Cal.App.3d 417, 421 [adjudication for attempted robbery not subject to provisions of § 707, subd. (b)].) Because the juvenile court found that minor had satisfactorily completed probation and because neither of minor's offense were listed in section 707, subdivision (b), the court was required to dismiss the petition and order all records pertaining to the petition sealed. (See *In re I.F.* (2017) 13 Cal.App.5th 679, 689; *In re A.V.* (2017) 11 Cal.App.5th 697, 701 [“if the court finds the ward in substantial compliance so that he or she has satisfactorily completed probation, the court must dismiss the petition and seal the ward's records”].)

#### **DISPOSITION**

The matter is remanded to the juvenile court with directions to order the petition dismissed and the records sealed (Welf. & Inst. Code, § 786). In all other respects, the judgment is affirmed.